

# FOSTERLAW

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October 27, 2014

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

RE: GN Docket No. 14-25 *In the Matter of Report on FCC Process Reform*

WC Docket No. 11-42 *In the Matter of Lifeline and Link-Up Reform and Modernization*

WC Docket No. 09-197 *In the Matter of Telecommunications Carriers Eligible to Receive Universal Service Support*

## NOTICE OF EX PARTE PRESENTATION

Dear Ms. Dortch:

On October 27, 2014, I had a telephonic meeting with Diane Cornell, Special Counsel, Office of the Chairman. During this meeting, we discussed pending reform efforts to reduce backlog at the Federal Communications Commission (the Commission) and suggestions to resolve pending compliance plans filed pursuant to Paragraph 368 of the Lifeline Reform Order<sup>1</sup> as well as pending applications for Eligible Telecommunications Carrier ("ETC") status in Non-Jurisdictional States, or those states which have ceded jurisdiction to designate ETCs to the Commission.<sup>2</sup>

During the call, I expressed support for implementation of the recommendations contained in the Report on FCC Process Reform. I noted that focus was being placed on

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<sup>1</sup> *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (FCC rel. Feb. 6, 2012) ("*Lifeline Reform Order*").

<sup>2</sup> 47 U.S.C. 214(e)(6) ("In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission **shall upon request** designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law.") (Emphasis supplied.)

matters that have been considered backlogged and on increasing the speed of disposal for all matters. Ms. Cornell's October 9, 2014, blog, "An Update on Process Reform Efforts to Reduce Backlog" gave examples of matters where progress has been made. Unfortunately, there is no mention any efforts to resolve either the 58 compliance plans filed by carriers since issuance of the *Lifeline Reform Order* and implementation of the compliance plan requirement or the 40 pending applications for ETC designation.

In its *Lifeline Reform Order*, the Commission decided to forbear from applying the Communications Act's facilities requirement of section 214(e)(1)(A)<sup>3</sup> to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program, subject to certain conditions. One of those conditions was:

the carrier must file, and the Bureau must approve, a compliance plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement the obligations contained in this Order as well as further safeguards against waste, fraud and abuse the Bureau may deem necessary.<sup>4</sup>

The Lifeline Reform Order set a July 1, 2012, deadline for existing carriers to file these compliance plans with the Commission, and state commissions are prohibited from designating new ETCs to non-facilities based wireless carriers without Commission approval of the applicants' compliance plans.<sup>5</sup>

In response to this seemingly innocuous Compliance Plan requirement, a total of seventy-eight (78) compliance plans were submitted to the Wireline Competition Bureau ("Bureau"). Most, if not all, of the companies that submitted Compliance Plans were requested to travel to the Commission's headquarters in Washington, D.C., at great expense, to meet with Bureau Staff. In the second half of 2012, twenty (20) plans were approved by the Bureau. The last approval was released December 26, 2012. Since that time, the Bureau has not approved any compliance plan whatsoever and has not provided any public explanation as to why over fifty (50) plans have been allowed to languish with no action. No announcement was ever made as to how or why particular plans were selected for approval or why companies whose pending compliance plans are substantially the same as those approved have not also received approval.

I explained to Ms. Cornell that the effect of these actions (and inactions) by the Bureau has been to create a group of privileged carriers that can expand their Lifeline service offerings and a group of carriers who are prevented from entering the marketplace altogether or from expanding to new geographical markets. The resulting situation is anti-competitive and inequitable.

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<sup>3</sup> 214(e)(1)(A) requires that a carrier must use its own facilities or a combination of its own facilities and resale of another carrier's facilities in order to provide universal service supported services.

<sup>4</sup> *Lifeline Reform Order* at para. 368.

<sup>5</sup> *Lifeline Reform Order* at para. 380.

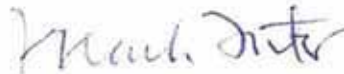
In order to remedy the unjustness of the compliance plan situation, I suggested that the FCC give blanket approval to all pending compliance plans that incorporate the same content of any previously approved plan, or, alternatively that the Commission hold a webinar for companies with pending compliance plans in order to educate attendees as to what the FCC expects and to provide an example of a compliance plan that the Commission suggests companies follow. If companies participate in the webinar and then adopt the suggested plan, their compliance plans would be automatically approved.

With respect to the pending ETC applications, only five ETC designations have been granted since amended applications to comply with the Lifeline Reform Order were filed in the first quarter of 2012. The last designation was granted on February 18, 2014<sup>6</sup> and prior to that, the last designation occurred on June 13, 2012. As of this date, approximately forty (40) ETC applications are pending.

I suggested that all pending ETC applications be consolidated for processing and that an intervention deadline be established (if necessary) along with a deadline set for Bureau staff to announce what – if any – objections it has to particular applications. Those applications which do not receive objections from Bureau staff should be immediately granted. For those applications where objections are raised, the applicants should be provided an opportunity to respond to objections and attempt to cure with amended filings and then have their cases finally ruled upon by an established deadline.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically. If there are questions, please communicate directly with the undersigned.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Mark Foster", is written over a horizontal line.

Mark Foster

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<sup>6</sup> This designation, to NTUA Wireless within the Navajo nation, was granted in connection with the applicant's authority to receive support from the Tribal Mobility Fund Phase I program. WC Docket 09-197, *Telecommunications Carriers Eligible for Universal Service Support*, Order (Feb. 18, 2014).